



**Nzibo v Naado & 4 others (Civil Suit E262 of 2019)
[2025] KEHC 13657 (KLR) (Civ) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13657 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL SUIT E262 OF 2019**

**JN MULWA, J
OCTOBER 2, 2025**

BETWEEN

YUSUF ABDULRAHMAN NZIBO PLAINTIFF

AND

NISSAN OLE NAADO 1ST DEFENDANT

MOHAMED ADEN MAHAT 2ND DEFENDANT

ABDALLA MOHAMED ABDALLA 3RD DEFENDANT

IBRAHIM OMUTUNGA MCHELULE 4TH DEFENDANT

ALI GOLICHA GUDA 5TH DEFENDANT

RULING

1. This suit was referred to court annexed mediation by the court vide an order of court dated 8/05/2023. The parties upon conducting mediation sessions reached a full settlement agreement and a report was duly prepared by the mediator one Grace Wairimu, vide MAC/2022/1004. The parties thereto also executed the agreement by appending their signatures on 5/06/2023.
2. On 22/06/2023, the mediation settlement agreement was filed in the Court Annexed Mediation Registry.
3. By a motion, dated 28/06/2024 the Applicants/Defendants sought that the mediation settlement Agreement dated 5/06/2023 be adopted as a judgment of the court with costs being borne by the Respondent who is the Plaintiff in the suit.



4. It is premised on Section 59 (B) (4) & (5) of the *Civil Procedure Act*, and on Rule 43 of the Judiciary Court Annexed Mediation Rules, and upon grounds stated thereon that upon all the parties freely and voluntarily expressed their respective positions which were reduced in the settlement agreement as filed.
5. Upon service to the Respondent/Plaintiff filed a replying affidavit he swore on 12/02/2025 raising two issues that he says are yet to be fulfilled by the defendants being clause No. 5 (iv) and 7, being that each party was to bear own costs, and that no communication has been forthcoming from the executive supreme council of Kenya absorbing him from any allegations of impropriety corruption and misappropriation of funds.
6. The matter has been mentioned severally for the Applicants to seek further instructions on the issue concerning communication but which the advocate for the applicants submits has been made orally.
7. Article 159(c) of the Kenya Constitution empowers the court to exercise its authority guided by several principles including invoking alternative forms of dispute resolution- reconciliation mediation arbitration and traditional dispute mechanisms as far as they do not contravene the bill of rights, or repugnant to justice and morality.
8. Rule 4.3 of the Court Annexed Mediation Rules requires that once a settlement has been reached it ought to be placed before the court for adoption as a judgment or order of the court whose jurisdiction is circumscribed and underlined under Sections 59B(4) & (5) of the *Civil Procedure Act* (Court annexed Mediation) rules 2022 under Legal Notice 145 of 2022.
9. Rule 33 mandates the settlement agreement to be filed upon which the court may proceed to adopt the same as provided at Rule 34.
10. At Rule 34(3), the court may seek further clarification from the parties before adopting the agreement.
11. This court has engaged the parties severally on this aspect and specifically on the two issues cited above but for unexplained delays, no resolution has been forthcoming; mainly in the issue of communication from the council of supreme council of Kenya which delay cannot be explained, for now well over two years though counsel for the Applicants told the court that the necessary communication has been made albeit not in writing.
12. I have looked at the impugned clause (IV) which does not state the mode of communication.
I am satisfied that the necessary communication has been made to the Plaintiff/Respondent.
13. I have also taken into account what the plaintiff depones in his replying affidavit that he has health issues and would wish to have this matter finalized, which is also one of the tenets of justice that a matter shall be expeditiously disposed of without undue regard to technicalities that do not go to the root of the dispute.
14. The court is minded that this dispute was brought to court in 2019. Six years down the line is an inordinate delay due to issues between the parties. Litigation must come to an end.
15. As required under Rule 36, I am persuaded to adopt the mediation report dated 20/06/2023 as is. A decree shall follow this adoption order for enforcement of the same as a decree of the court.
16. Rule 36 (4) provides that a party who is aggrieved by failure to implement an order or decree arising from the settlement agreement may move to court for its execution as provided for under the relevant procedural rules or apply for further directions by the court.



17. For the foregoing the application dated 28/06/2024 is hereby granted with each party to bear its own costs on both the mediation process and this application.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF OCTOBER, 2025.

.....

JANET MULWA.

JUDGE

